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HONEYWELL INTERNATIONAL INC.  
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MORRISTOWN NJ 07962-2245

In re Application of  
Ruth D. Kreichauf  
Appl. No. 09/818,383  
Filed: March 27, 2001  
For: MEANS OF PROVIDING  
SAFE HAVEN WITHIN BUILDINGS DURING  
CHEMICAL OR BIOLOGICAL ATTACK

**DECISION ON PETITION  
UNDER 37 CFR 1.181**

This is a decision on Applicant's Petition under 37CFR 1.181 filed on February 07, 2006 to withdraw the finality of the Office Action mailed December 07, 2005. No fee is required for the petition.

The petition is granted.

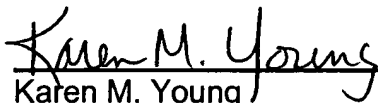
Applicant filed an RCE October 14, 2005 with claims 26 – 38. Of these claims, only 37 and 38 were new and the remaining claims were the same as in the parent application examined and finally rejected in an Office Action mailed July 14, 2005. In finally rejecting the claims in the first Office Action of the RCE, the Examiner applied the same grounds of rejection against claims 26 – 36 as applied in the final rejection of the Office Action mailed July 14, 2005 in the parent application but additionally applied a new ground of rejection applied against unamended claims 26 – 36 by applying an additional reference (Holmes). Applicant petitions for withdraw of the finality of the Office Action in the RCE.

Petitioner cites MPEP 706.07(b) for the propriety of when to and when not to make a first action final rejection. A review of the prosecution history indicates that the Examiner additionally applied a newly cited reference (Holmes) against non-amended claims 26 – 36 in violation of MPEP 706.07(b). Petitioner alleges, in essence, that the new ground of rejection in the RCE involving Holmes was not necessitated by applicant's amendment with respect to claims 26 – 36. The record fails to show any error in petitioner's position.

Accordingly, the finality of the rejection set forth in the Office Action mailed December 07, 2005 is hereby withdrawn. The amendment filed February 07, 2006 will be considered as an amendment filed pursuant to 37 CFR 1.111 and will be entered as a matter of right barring any compliance violation under 37 CFR 1.121 for entry. The Supervisory Legal Instruments Examiner will be notified that the status of the amendment filed February 07, 2006 requires correction from "Amendment After Final" to - - Amendment - After Non-Final Rejection - - and the Supervisory Patent Examiner will be notified that the amendment requires a response in the form of a complete Office Action.

PETITION GRANTED.

Any questions regarding this decision should be directed to Special Program Examiner Allan N. Shoap at 571-272-4514.

  
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Karen M. Young  
Director  
Technology Center 3700